

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

Intersections Inc. and Net Enforcers, Inc.,

Plaintiffs,

v.

Joseph C. Loomis and Jenni M. Loomis,

Defendants.

Civil Action No. 1:09CV597 (LMB/TCB)

**DEFENDANT'S OBJECTIONS TO MAGISTRATE JUDGE'S ORDER DENYING
DEFENDANT'S MOTION TO VACATE PROTECTIVE ORDER**

Comes now Defendant Joseph C. Loomis ("Mr. Loomis"), by counsel, and timely files his Objections to Magistrate Judge Theresa C. Buchanan's Order denying Defendant's Motion to Vacate Protective Order, dated March 17, 2011, Docket No. 263, as set forth below.

First, the Protective Order is so unconstitutionally broad and imprecise that it cannot possibly be upheld under Fourth Circuit precedent. The Magistrate Judge brushed over every one of the arguments pointing out the Protective Order's unenforceability, devoting not a single word of analysis to the issue.

Second, all of the contact that the Magistrate Judge found problematic with respect to the Protective Order occurred in Arizona during the pendency of an existing federal bankruptcy case. At all relevant times, there was an automatic stay that had been imposed under federal law as to the underlying Virginia merits litigation.¹ This Court has no authority to sanction a litigant for conduct that occurs under the auspices of a federal bankruptcy court in another jurisdiction where a statutorily-imposed automatic stay is in place. Had Plaintiffs wanted to docket the

¹ At one point, the automatic stay was partially lifted to allow litigation of a question related to whether this case had settled, but that partial lifting of the stay did not impact the stay of the underlying, substantive proceedings.

Protective Order in the bankruptcy court, where this entire case might have been tried for all anyone knew at the time of the contacts, they could have done so. However, they undoubtedly knew that the Protective Order would never have been enforced in that jurisdiction.

Third, the Magistrate Judge reversed her own in-court clarification of who was enjoined from contacting persons under the Protective Order, brushing aside even Plaintiffs' written acknowledgement of its limitation to only Mr. Loomis and *former* Arizona counsel. She effectively found that the Protective Order applied to two attorneys who were unrelated to the former Arizona counsel. This is truly unfair, and the interpretation is so sweeping that it would have prevented Mr. Loomis' esteemed, senior bankruptcy counsel (Mr. Gerald Smith of Lewis & Roca, LLP) from taking a deposition in another federal case. Obviously this is an untenable result.

Fourth, and assuming all of these jurisdictional problems with the Protective Order could be overcome, the only conduct that was actually encompassed by the Protective Order concerned a single text message and a single voicemail to one witness concerning some ski clothes, and as to another witness with whom Mr. Loomis had a number of social contacts. The Magistrate Judge essentially found, without any supporting evidence or analysis, that somehow these contacts would irreparably damage the Plaintiffs' case.

Fifth, discovery should have been allowed as to the issues which formed the basis the default recommendation.

In support of the foregoing, the Court's attention is respectfully directed to the Facts and Argument contained in Defendant's Objections to Report and Recommendation for entry of Default Judgment against Joseph C. Loomis, which matters are incorporated herein by reference.

The foregoing premises considered, Defendant Joseph C. Loomis hereby moves this Honorable Court to reject the Order denying Defendant's Motion to Vacate Protective Order and to vacate the Protective Order entered in this case on October 30, 2009. In all cases he seeks such other and further relief as justice may require.

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of March, 2011, I have filed a true and correct copy of the foregoing with the Clerk of Court via the CM/ECF e filing system which will send notification of this filing to the following counsel of record:

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